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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,959	12/14/2000	Brian Feinberg	19880004200	1713

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EXAMINER

SHANNON, MICHAEL R

ART UNIT

PAPER NUMBER

2614

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 09/738,959	Applicant(s) FEINBERG ET AL.	
	Examiner Michael R. Shannon	Art Unit 2614	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 11 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-20.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See appended sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed on October 11, 2005 have been fully considered but they are not persuasive.

The argument relating to the rejection of claims 1-3, 7-17, and 20 under 35 USC §102(e) as being anticipated by Blumenau (USPN 6,108,637), is not persuasive.

The Applicant states, "the Blumenau reference discloses monitoring, at a content display site, the display of content provided to the content display site. However, the Blumenau reference does not teach monitoring information provided to the content display site at a site associated with content provider site. By contrast, the claimed invention teaches monitoring a particular channel transmitted from a content provider to subscriber equipment, the monitoring occurring at a terminal associated with content provider equipment." The Examiner disagrees that the monitoring actually takes place in the content display site. As is quoted by the Applicant, Blumenau states, "As shown in FIG. 3C, the monitoring information is transferred from the content display site 302 to the content provider site 301 over the network communication line 202" [col. 11, lines 2-5]. Upon further reading the cited paragraph, the Blumenau reference teaches, "Review of the monitoring information produced by the monitoring instructions can enable conclusions regarding the observer's observation of the content to be deduced, as explained in more detail below. (It should be noted that, more generally, monitoring instructions according to the invention can be used to monitor the display of content on a computer system whether or not the computer system is part of a network and

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receives content and monitoring instructions over the network)" [col. 11, lines 5-15].

The Blumenau reference makes it very clear that the monitoring is done at the content provider site 301 once the content provider receives the monitoring information from the content display site 302. Figures 3B and 3C give a clear explanation of this fact.

The arguments relating to the rejection of claims 4-6, 18, and 19 under 35 USC §103(a) as being unpatentable over Blumenau in view of Sitnik (US 2002/0010935A1), are not persuasive. The argument relating to claim 1 is not persuasive, therefore, the arguments relating to claims 4-6, 18, and 19 are moot and therefore, not persuasive.

The arguments relating to the OFFICIAL NOTICES are not persuasive. OFFICIAL NOTICE was given to the fact that it is notoriously well known in the art to transmit and store images (or frames) in bitmap format. Since, as discussed in the rejections to claims 4 and 5, the Sitnik reference discloses sending a single frame as a content sample, it would be clearly obvious to use a bitmap image as that single frame/content sample. As cited previously, the Microsoft Computer Dictionary defines a bit images (bitmap) as "a sequential collection of bits that represents in a memory an image to be displayed on the screen, particularly in systems having a graphical user interface...the screen itself, for example, represents a single bit image" [see photo-copied attachment]. It is clearly well known in the art that bitmap images represent screen images particularly those associated with graphical user interfaces. The OFFICIAL NOTICE statement of the previous Office Action, therefore, still stands.

The previous Office Action is copy and pasted below for reference, with edits made to reflect the current claim amendments.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 7-17, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Blumenau (USP 6,108,637), cited by Examiner.

Regarding claim 1, the claimed “method for monitoring operation of an information distribution system comprising provider equipment and subscriber equipment” is met as follows:

- The claimed step of “receiving, at a control unit, a directive to monitor a particular channel of a plurality of channels transmitted from a content provider to said subscriber equipment, and at a particular terminal associated with said provider equipment” is met by the monitoring instructions, which are delivered to the display site 302 (the subscriber equipment) from the content provider site 301 (the provider equipment) and instruct the display site 302 to monitor the use of the delivered content [Fig. 3B and col. 10, lines 55-65]. The monitoring of a channel is taken into account when one considers that data channels are opened and used

for delivering content to the display site. The monitoring instructions would therefore instruct the display site as to what channel to monitor. For example, the audiovisual media such as television and radio is discussed as a related art that may need monitoring [col. 1, lines 40-43].

- The claimed step of “sending a command indicative of the particular channel and particular terminal to be monitored”, is, again, met by the monitoring instructions, which would instruct the display site (terminal) as to what channel to monitor [col. 10, lines 55-65]. For example, the audiovisual media such as television and radio is discussed as a related art that may need monitoring [col. 1, lines 40-43].
- The claimed step of “receiving information representative of content being transmitted on the particular channel from the particular terminal” is met by the transmission of the monitoring information from the content display site 302 to the content provider site 301 [col. 11, lines 2-10], which was information that was monitored and collected according to the monitoring instructions.
- The claimed steps of “capturing the received content” and “reporting the captured content” are met by the review of the monitoring information produced by the monitoring instructions after the information is received at the content provider site 301 (or other site as discussed in column 20, lines 1-4), which enable conclusions regarding the observer’s observation of the content to be deduced [col. 11, lines 7-10].

Regarding claim 2, the claimed "method of claim 1, wherein the reported contents are used to verify delivery of contents from the information distribution system" is met by the observations of the received monitoring information, which indeed does provide verification of the content delivery at the display site [col. 11, lines 7-10].

Regarding claim 3, the claimed "method of claim 1, wherein the reported contents are used to verify operation of a user interface at the particular terminal" is met by the monitoring method that takes into account the monitoring of a "user interface mechanism" [col. 19, lines 50-52].

Regarding claim 7, the claimed "method of claim 1, wherein the directive is received as part of a regular monitoring schedule" is met by the fact that the "monitoring instructions are transferred to the content display site 302 together with the content" [col. 11, lines 57-59]. It can be realized that a regular schedule of monitoring is accomplished upon regular transmissions of content (and therefore, concurrent monitoring instructions) to the content display site 302. A subscriber using the system would not be away of the "regular monitoring schedule", but as long as he/she was using the display site for retrieval of content, the monitoring instructions would be regularly downloaded and acted upon.

Regarding claim 8, the claimed "method of claim 1, wherein the command is sent to a remote control unit" is met by the ability to send the monitoring instructions to any of the plurality of remotely attached control units (or display sites). The monitoring instructions take the form of a computer program that included instructions for monitoring and for displaying content [col. 11, lines 57-61]. The display site or "control

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unit” can be any type of display device, including a conventional computer display monitor, a television, or one or more audio speakers [col. 10, lines 36-39].

Regarding claim 9, the claimed “method of claim 1, wherein the particular terminal is selected from among a plurality of terminals”, is, again, met by the ability to send the monitoring instructions to any of the plurality of remotely attached control units (or display sites), which can be any type of display device, including a conventional computer display monitor, a television, or one or more audio speakers [col. 10, lines 36-39]. The “Content display site” refers to a device that is part of a network and that can receive and display content from another device that is part of the network, the network including any collection of interconnected computer systems (such as those mentioned above) [col. 10, lines 15-39].

Regarding system claim 10, see the above rejection for similar method claim 1.

Regarding claim 11, the claimed “monitoring system of claim 10, further comprising a monitor and control unit operatively coupled to the control unit and configured to provide the directive to monitor the particular channel at the selected terminal” is met by the review of the monitoring information produced by the monitoring instructions after the information is received at the content provider site 301 (or other site operatively coupled to the display site and content provider site, as discussed in column 20, lines 1-4). Furthermore, as is illustrated in Figures 5A-5C, the content and monitoring instructions can be transferred to the content display site 302 from the application manager site 501 in response to a request received from the content



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provider site 301 upon receipt of the request from the content display site 302 [col. 22, lines 11-16].

Regarding claim 12, the claimed "monitoring system of claim 11, wherein the monitor and control unit is further configured to provide a set of directives to test user interaction at the selected terminal" is met by the application manager site 501 (previously discussed), which can send monitoring instructions for monitoring use of a "user interface mechanism", and therefore, user interaction with the user interface mechanism [col. 19, lines 50-52]. For example, column 17, line 59 begins a discussion of how a user interface mechanism is used to monitor the audio content of received content.

Regarding claim 13, the claimed "monitoring system of claim 11, wherein the monitor and control unit is further configured to provide a set of directives to verify proper delivery of contents on a plurality of channels to a plurality of terminals" is met by the application manager site 501 or content provider site 301 providing monitoring instructions to the display site 302. The monitoring instructions meet the claimed "set of directives" and the observations of the received monitoring information provide verification of the content delivery at the display site [col. 11, lines 7-10]. There are multiple display sites on the network, as discussed in column 10, lines 15-39.

Regarding claim 14, the claimed "monitoring system of claim 10, wherein the command directs the selected terminal to tune to the particular channel" is met by the return of the monitoring information to the content provider site 301. The content display site 302 can communicate to a communication port that is different than the port

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from which the content and the monitoring instructions were transmitted to it [col. 20, lines 23-26]. Also note that a proxy server can be used to mediate communication between the client computers and other sites on the network (such as the content provider site). The proxy server may not allow communication over a channel specially designated for transmitting monitoring data [col. 20, lines 50-56], this inherently teaches a channel that is used for transmitting monitoring information that must be tuned to in order to transmit the monitoring information to the provider 301, therefore meeting the claim.

Regarding claim 15, the claimed "monitoring system of claim 10, further comprising a remote control unit configured to receive the command from the control ~~system~~ unit and direct the selected terminal to tune to the particular channel" is met by the review of the monitoring information produced by the monitoring instructions after the information is received at the content provider site 301 (or other site operatively coupled to the display site and content provider site, as discussed in column 20, lines 1-4). Furthermore, as is illustrated in Figures 5A-5C, the content and monitoring instructions can be transferred to the content display site 302 from the application manager site 501 in response to a request received from the content provider site 301 upon receipt of the request from the content display site 302 [col. 22, lines 11-16]. Also note that a proxy server can be used to mediate communication between the client computers and other sites on the network (such as the content provider site). The proxy server may not allow communication over a channel specially designated for transmitting monitoring data [col. 20, lines 50-56], this inherently teaches a channel that

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is used for transmitting monitoring information that must be tuned to in order to transmit the monitoring information to the provider 301.

Regarding claim 16, the claimed “monitoring system of claim 10 and including a plurality of terminals of a plurality of terminal models” is met by the ability to send the monitoring instructions to any of the plurality of remotely attached control units (or display sites), which can be any type of display device (terminal model), including a conventional computer display monitor, a television, or one or more audio speakers [col. 10, lines 36-39]. The “Content display site” refers to a device that is part of a network and that can receive and display content from another device that is part of the network, the network including any collection of interconnected computer systems (such as those models mentioned above) [col. 10, lines 15-39].

Regarding claim 17, the claimed “monitoring system of claim 10, wherein the control system unit includes a media capture unit configured to capture the contents received from the selected terminal” is met by the review of the monitoring information produced by the monitoring instructions after the information is **received** at the content provider site 301 (or other site, such as application manager site 501, as discussed in column 20, lines 1-4), which enable conclusions regarding the observer’s observation of the content to be deduced [col. 11, lines 7-10]. The reception of the monitoring information inherently teaches some sort of “capture” unit for capturing the content.

Regarding system claim 20, see the above rejection to method claim 1.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-6, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blumenau (USP 6,108,637), in view of Sitnik (US 2002/0010935), both cited by Examiner.

Regarding claim 4, the Blumenau reference teaches all of that which is discussed above with regards to claim 1. The Blumenau reference does not, however, teach that the "received contents are captured as one or more video frames", as claimed. The Blumenau reference does teach sending monitoring information back to the provider site 302, however, does not expressly say that the monitoring information can be "one or more video frames". Sitnik teaches an in-house (or possibly, out of house) TV-to-TV Channel Peeking system that allows a user to query a TV and obtain a content sample that may include single or multiple frames of currently viewed content [paragraph 0016]. The Blumenau reference points out that obtaining other types of monitoring information is contemplated by his invention [col. 13, lines 29-30] and that the network of his invention can include a private computer network such as an intranet that can transfer video and/or audio content (HAVi network) [col. 11, lines 16-22]. The network of Sitnik fits this description and could be used as a way of implementing video monitoring in the Blumenau reference. As the Sitnik reference states, "TV networks, advertisers, etc.

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may gain additional valuable data from the apparatus operating in accordance with the present invention" [paragraph 0024]. In other words, TV network would benefit from being able to query TV's on the network to get a frame or multiple frames of currently viewed content. It would have been obvious to one of ordinary skill in the art at the time of the invention to allow the system of Blumenau to receive one or more video frames as content, in order to "gain additional valuable data" about the operation of the apparatus through querying and monitoring.

Regarding claim 5, the Blumenau reference teaches all of that which is discussed above with regards to claim 1. The Blumenau reference does not, however, teach that the "received contents are captured as a video sequence", as claimed. The Blumenau reference does teach sending monitoring information back to the provider site 302, however, does not expressly say that the monitoring information can be "a video sequence". Sitnik teaches an in-house (or possibly, out of house) TV-to-TV Channel Peeking system that allows a user to query a TV and obtain a content sample that may include single or multiple frames of currently viewed content (multiple consecutive frames representing a video sequence) [paragraph 0016]. The Blumenau reference points out that obtaining other types of monitoring information is contemplated by his invention [col. 13, lines 29-30] and that the network of his invention can include a private computer network such as an intranet that can transfer video and/or audio content (HAVi network) [col. 11, lines 16-22]. The network of Sitnik fits this description and could be used as a way of implementing video monitoring in the Blumenau reference. Also, the Sitnik reference states, "TV networks, advertisers, etc. may gain additional

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valuable data from the apparatus operating in accordance with the present invention" [paragraph 0024]. In other words, TV network would benefit from being able to query TV's on the network to get a video sequence of currently viewed content. It would have been obvious to one of ordinary skill in the art at the time of the invention to allow the system of Blumenau to receive a video sequence as content, in order to "gain additional valuable data" about the operation of the apparatus through querying and monitoring.

Regarding claim 6, see the above rejection to claim 4, also note that the Examiner takes OFFICIAL NOTICE that it is notoriously well known in the art to transmit and store images (or frames) in bitmap format. As such, the definition of bitmap (or bit image), according to the Microsoft Computer Dictionary 5<sup>th</sup> Edition indicates that the screen itself represents a single bit image. Therefore, the Examiner submits that it would have been clearly obvious to one of ordinary skill in the art to substitute and transmit the "bitmap" instead of the "one or more frames" as monitoring information, in order to "gain additional valuable data" about the operation of the apparatus through querying and monitoring.

Regarding claim 18, see the above rejection to claim 4.

Regarding claim 19, see the above rejection to claim 5.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael R. Shannon who can be reached at (571) 272-

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7356 or Michael.Shannon@uspto.gov. The examiner can normally be reached by phone Monday through Friday 8:00 AM – 5:00PM, with alternate Friday's off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller, can be reached at (571) 272-7353.

**Any response to this action should be mailed to:**

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to customer service whose telephone number is **(571) 272-2600**.

Michael R Shannon  
Examiner  
Art Unit 2614

Michael R Shannon  
October 26, 2005



JOHN MILLER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600